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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY LOVE CALLANDRET,

Defendant and Appellant.

B296351

(Los Angeles County
Super. Ct. No. VA054074)

THE COURT:*

In 1999, a jury convicted Timothy Love Callandret (defendant) of first degree robbery. (Penal Code, § 211.)¹ In a bifurcated proceeding, the trial court found true allegations that defendant's two 1984 convictions for assault (§ 245, subd. (a)) and his 1992 conviction for robbery (§ 211) constituted strikes

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

pursuant to our Three Strikes Law (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(j)), and that his 1992 robbery conviction also constituted a prior serious felony (§ 667, subd. (a)(1)). The trial court sentenced defendant to a total indeterminate term of 30 years to life, comprised of a 25-year “third strike” sentence plus five years for the prior serious felony.

In January 2019, defendant filed a motion asking the court to strike the prior serious felony allegation and to reduce his sentence by five years. In his motion, defendant argued that the Senate Bill No. 1393 (S.B. 1393), which for the first time granted trial courts the discretion to strike a prior serious felony allegation, applied to him. The trial court denied his motion.

We appointed counsel to represent defendant in this appeal. Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and asked this court to independently review the record on appeal to determine whether any arguable issues exist. On June 20, 2019, we advised defendant that he had 30 days within which to personally submit any contentions or issues he wished us to consider. Defendant submitted a four-page letter brief. In addition to expressing remorse for committing the crime underlying this sentence and attaching various certificates of completion, defendant argues that the trial court erred in not giving him the benefit of S.B. 1393.

The trial court properly denied defendant’s motion for relief under S.B. 1393. Defendant’s conviction became final on March 12, 2001, which is the last day on which he could file a petition for certiorari on direct review of his conviction. (*People v. Vieira* (2005) 35 Cal.4th 264, 306.) It is well settled, however, that S.B. 1393—which took effect on January 1, 2019—does not apply to

final convictions. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 972; see also *In re Estrada* (1965) 63 Cal.2d 740, 745 “[t]he amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final.”].)

Absent any new authority to resentence defendant under S.B. 1393, the trial court lacked jurisdiction to grant defendant’s request. (See *People v. Chlad* (1992) 6 Cal.App.4th 1719, 1725.) Because the trial court lacked jurisdiction to modify defendant’s sentence, denial of his motion to modify his sentence could not have affected his substantial rights. (*Id.* at p. 1726.) Accordingly, the “order denying [the] motion to modify sentence is not an appealable order,” and the appeal must be dismissed. (*Ibid.*)

The appeal is dismissed.

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*LUI, P.J.,

CHAVEZ, J.,

HOFFSTADT, J.